

FAX COVER SHEET

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Date: 1/29/2010Time Sent: 2:15pmPages: 6
(Including cover sheet)To: Bill LeonardFax: 360-705-6822

From: *Michael Tehan*
Assistant Regional Director
Habitat Conservation Division

Subject: South Park Bridge Replacement Project, King County, WA

Comments: Attached are the cover letter and the T&Cs for the subject BiOp, as requested by Mike Grady.

Please Advise of Any Deficiency in this Transmission

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, Washington 98115

Reply To:
NMFS Tracking No.:
2008/03523

January 25, 2010

Daniel M. Mathis
Division Administrator
Federal Highway Administration
Evergreen Plaza Building
711 S. Capitol Way, Suite 501
Olympia, Washington 98501

Re: Endangered Species Act Section 7 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the South Park Bridge Replacement Project, King County, Washington. (Lower Duwamish River, 6th field HUC 171100130399)

Dear Mr. Mathis:

The enclosed document contains a biological opinion (Opinion) prepared by the National Marine Fisheries Service (NMFS) pursuant to Section 7(a)(2) of the Endangered Species Act (ESA) on the effects of the FHWA's funding of the South Park Bridge Replacement Project, in King County, Washington. In this Opinion, NMFS concludes that the action, as proposed, is not likely to jeopardize the continued existence of Puget Sound (PS) Chinook salmon and PS steelhead, or result in the destruction or adverse modification of designated critical habitat for PS Chinook salmon.

As required by Section 7 of the ESA, the Services provided an incidental take statement with the Opinion. The incidental take statement describes reasonable and prudent measures NMFS considers necessary or appropriate to minimize incidental take associated with this action. The take statement sets forth nondiscretionary terms and conditions, including reporting requirements, that the Federal agency and any person who performs the action must comply with to carry out the reasonable and prudent measures. Incidental take from actions that meet these terms and conditions will be exempt from the ESA take prohibition.

This document also includes the results of our analysis of the action's likely effects on essential fish habitat (EFH) pursuant to Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), and includes three conservation recommendations to avoid, minimize, or otherwise offset potential adverse effects on EFH.



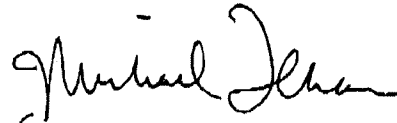
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The Conservation Recommendations are an identical subset of the ESA Terms and Conditions. Section 305(b) (4) (B) of the MSA requires Federal agencies to provide a detailed written response to NMFS within 30 days after receiving these recommendations.

If the response is inconsistent with the EFH conservation recommendations, the FHWA must explain why the recommendations will not be followed, including the justification for any disagreements over the effects of the action and the recommendations. In response to increased oversight of overall EFH program effectiveness by the Office of Management and Budget, NMFS established a quarterly reporting requirement to determine how many conservation recommendations are provided as part of each EFH consultation and how many are adopted by the action agency. Therefore, in your statutory reply to the EFH portion of this consultation, we ask that you clearly identify the number of conservation recommendations accepted.

If you have any questions, please contact Sean Callahan of my staff at the Washington State Habitat Office at (206) 716-1145, by e-mail at sean.callahan@noaa.gov, or by mail at the letterhead address.

Sincerely,



for Barry A. Thom
Acting Regional Administrator

cc Pete Jilek, FHWA
Bill Leonard, WSDOT, H&LP
Paul Wagner, WSDOT, HQ

downstream of pile driving activities, and spanning the entire estimated 400-foot wetted width of the waterbody, and;

Extent of Take from Water Quality Degradation. Take caused by degradation of surface water quality during all in-water construction activities, is expected intermittently in an area up to 4,500 square feet within the Duwamish Waterway, during the three construction windows.

Extent of Take from Depressed Forage Production and Predation. Take from depressed production of invertebrate prey will occur through the modification of:

1. A temporary loss or degradation of preybase over approximately 20,000 square feet of the Duwamish River for approximately 26 months, and
2. A temporary loss or degradation of preybase over approximately 35,000 square feet of riverbed habitat over for approximately 26 months.

The estimated extent of habitat affected by construction activities represents the extent of take exempted in this incidental take statement. These extents are readily observable and therefore suffice to trigger reinitiation of consultation, if exceeded and necessary (see H.R. Rep. No 97-567, 97th Cong., 2d Sess. 27 (1982)).

Reasonable and Prudent Measures

The following measures are necessary and appropriate to minimize the impact of incidental take of listed species from the proposed action:

The FHWA shall:

1. Minimize incidental take from pile driving activities within the Mean Lower Low Water mark by a minimum of 20 dB reduction.
2. Minimize incidental take from temporary degradation of surface water quality from in-water construction activities.
3. Minimize incidental take resulting from reduced forage and predation.
4. Ensure completion of a monitoring and reporting program to confirm that the take exemption for the proposed action is not exceeded, and that the terms and conditions in this incidental take statement are effective in minimizing incidental take.

Terms and Conditions

The measures described below are non-discretionary, and must be undertaken by the FHWA or, if an applicant is involved, must become binding conditions of any permit or grant issued to the applicant, for the exemption in section 7(o)(2) to apply. The FHWA has a continuing duty to regulate the activity covered by this incidental take statement. If the FHWA (1) fails to assume and implement the terms and conditions or (2) fails to require an applicant to adhere to the terms

and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. To monitor the impact of incidental take, the FHWA or applicant must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement.

1. To implement RPM Number 1 (pile driving), the FHWA shall ensure that WSDOT will use specific performance standards for impact pile driving/proofing activities in the Duwamish River, as follows:
 - a. To the fullest extent practicable and through design, testing, and careful implementation, maximize effectiveness of the noise attenuation device with the goal of achieving a 20 dB attenuation measured at a distance of 10 meters from the pile in order to prevent an accumulated SEL of 187 dB from extending over more than 75 percent of the wetted channel width.
 - b. As the science evolves, use the best available underwater sound attenuation technology for any actions where there will be impact pile driving in the presence of listed species.
2. To implement RPM Number 2 (water quality degradation), the FHWA shall:
 - a. Monitor downstream turbidity levels in the Duwamish River during sediment-generating activities (i.e. during in-water construction). The FHWA shall include items identified below (i-iv) into the monitoring plan as part of their submittal or shall submit to NMFS for review no fewer than 60 days prior to in-water construction, a functionally-equivalent proposal for effective monitoring:
 - i. Monitoring shall be conducted at a distance of 300 feet downstream of in-water construction activities.
 - ii. If results indicate exceedances after two consecutive sampling events, operations will cease and a turbidity curtain or functional equivalent will be deployed around the specific activity, as close as practicable.
 - iii. Submit a monitoring report by December 31 following each in-water construction season to include, at a minimum, the following: (a) dates and times of in water construction activities; (b) monitoring results; sample times, locations, and measured turbidities (in NTUs); (c) summary of in-water construction activities and measured turbidities associated with those activities; and, (d) summary of corrective actions taken to reduce sediment/turbidity.
 - iv. All reports shall be sent to National Marine Fisheries Service, Washington State Habitat Office, Attention: (Sean Callahan, 510 Desmond Drive SE, Suite 103, Lacey, Washington 98503).

3. To implement RPM Number 3 (forage reduction), the FHWA shall ensure that WSDOT will:
 - a. Limit the area of temporary impacts from structures in the Duwamish River to 20,000 square feet and 35,000 square feet of riverbed habitat, respectively.
4. To implement RPM Number 4 (monitoring of pile driving), the FHWA shall ensure that WSDOT will:
 - a. Develop and implement a hydroacoustic monitoring plan to document the effectiveness of the approved sound attenuation system.
 - i. Submit the design specifications for the selected sound attenuation system to NMFS for review a minimum of 60 days prior to initiation of impact pile driving activities. If alternative sound attenuation technologies (i.e., other than confined bubble curtains) are employed, provide additional information documenting the effectiveness of these technologies if available and appropriate.
 - ii. Notify the Services within 24 hours if noise monitoring indicates that take limits will be exceeded.
 - iii. Submit hydroacoustic monitoring report to the Services for review within 120 days of the completion of monitoring activities.
 - iv. The hydroacoustic monitoring plan, attenuation system specifications, and hydroacoustic monitoring results must be prepared and implemented by individuals with proven and appropriate expertise in the fields of underwater acoustics and sound attenuation technologies, the biological effects of hydroacoustic stressor exposure, and related data collection.

NOTICE: If a sick, injured or dead specimen of a threatened or endangered species is found in the action area, the finder must notify NMFS Law Enforcement at (206) 526-6133 or (800) 853-1964, through the contact person identified in the transmittal letter for this Opinion, or through the NMFS Washington State Habitat Office. The finder must take care in handling sick or injured specimens to ensure effective treatment, and in handling dead specimens to preserve biological material in the best possible condition for later analysis of cause of death. The finder should carry out instructions provided by Law Enforcement to ensure evidence intrinsic to the specimen is not disturbed unnecessarily.

NOTICE: To follow inactive projects and, if necessary, withdraw the opinion for an incomplete project, the FHWA shall provide an annual report even if no actual work was completed in a particular year.